

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.2535/Del/2022
[Assessment Year : 2018-19]**

Hawa Singh, F-228/A, Main Lane Lado Sarai, Mehrauli, New Delhi-110030. PAN-AVPPS1958R	vs	ITO, Ward-62(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Mukul Gupta, CA	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	27.06.2023	
Date of Pronouncement	30.06.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2018-19 is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (“NFAC”), Delhi dated 26.08.2022.

2. The assessee has raised following grounds of appeal:-

1. *“The order passed by ld. CIT(A) and Ld. AO is bad in law and against the facts of the case.*
2. *That the Ld. CIT(A) erred in confirming the disallowance made by the Ld. AO amounting Rs, 15,33,114/- by invoking provisions of Section 36(1)(va) of the Income Tax Act.*
3. *That the Ld. CIT(A) erred in confirming the addition made by the ld. A.O. amounting Rs. 15,33,114/-on account of late deposit of ESI and PF.*
4. *That the Ld. CIT(A) erred in confirming the addition made by the ld. A.O. amounting Rs.4,34,867/-on account of late payment of VAT and GST payable.*

5. *That the Ld. CIT(A) erred in confirming the addition made by the Id. A.O. amounting Rs.19,67,981/- u/s 43B of the Act.*
6. *That the Ld. CIT(A) and Ld. AO (CPC) erred in not considering the provisions u/s 43B of the Income Tax Act.*
7. *That the ld. A.O. and Id. CIT(Appeals) also erred in not considering the various judgments of jurisdictional High Court and Tribunal.*
8. *That the appellant carves leave to add, alter, modify or delete any of the ground of appeal.”*

3. Facts giving rise to the present appeal are that in this case, Centralized Processing Center (“CPC”), Bengaluru made certain adjustment related to delay in payment employees contribution towards PF & ESI.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that the assessee company had deposited the total amount with an extra amount as late fee or interest, as the case may be, to respective fund before the due date of filing of return of income as prescribe in section 43B of the Income Tax Act, 1961 (“the Act”).

7. On the other hand, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He contended that the issue is no more *res-integra*. He submitted that the issue is squarely covered against the tax

payer by the judgment of Hon'ble Supreme Court in the case of **Checkmate Services P.Ltd. vs CIT-A in Civil Appeal No.2833 of 2016** dated **12.10.2022**.

8. I have heard Ld. Authorized Representative of the parties and perused the material available on record. Ld. Counsel for the assessee submitted that since the issue involved in this case is related to delay in deposit of employee's contribution towards PF & ESI by the assessee. However, considering the facts of the present case, the issue is restored to the file of AO for verification regarding deposit of contribution relating to PF & ESI in the light of decision of Hon'ble Supreme Court in the case of Checkmate Services P.Ltd. vs CIT-A (supra). Grounds raised by the assessee are thus, allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 30th June, 2023.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI